



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on _____

NOTICE OF ACTION TAKEN

2004 U.S.-MEXICO COMBINATION SERVICE PROCEEDING – DOCKET OST-2004-18692

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **UNITED AIR LINES, INC.** (formerly Docket OST-2004-17299), filed **3/10/04**, amended on: **6/18/04**, for:

XX Exemption for two years under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Denver, Colorado, and Cancun, Mexico. United states that it will serve the market on a year-round basis.

Application of **UNITED AIR LINES, INC.** (formerly Docket OST-2004-17491), filed **4/5/04**, for:

XX Exemption for two years under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Denver, Colorado, and Puerto Vallarta, Mexico. United states that it will serve the market on a seasonal basis.

Applicant rep: **Jeffrey A. Manley (202) 663-6670** DOT Analyst: **Linda L. Lundell (202) 366-2336**

Background

Under the U.S.-Mexico aviation agreement, two U.S. airlines may be designated to provide direct carrier service in any given city-pair market. At the time United filed the captioned applications, only one designation was available for each of the city-pair markets under the aviation agreement,¹ and competing applications were filed to United's requests--Allegiant Air, Inc. (Allegiant), and Grand Holdings, Inc., d/b/a Champion Air (Champion Air) to United's Denver-Cancun application, and Champion to United's Denver-Puerto Vallarta application.

By Order 2004-7-17, the Department instituted the *2004 U.S.-Mexico Combination Service Proceeding*, in Docket OST-2004-18692, and consolidated the already-filed applications into this proceeding to select one primary and one backup carrier for four U.S.-Mexico city-pair markets, including the Denver-Cancun and Denver-Puerto Vallarta city-pair markets. The order also established a procedural timetable for the case, including a deadline for the filing of direct exhibits by August 16, 2004.

On August 16, 2004, United timely filed its direct exhibits for the Denver-Cancun and Denver-Puerto Vallarta requests. On that same day, Allegiant filed a motion for leave to withdraw its application for Denver-Cancun authority. Champion Air did not file direct exhibits for any of the city-pair markets at issue in the proceeding, including the two sought here by United. On August 18, 2004, Champion Air orally advised the Department that it did not intend to pursue its requests for authority to serve the Denver-Cancun and Denver-Puerto Vallarta markets.²

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¹ Frontier Airlines, Inc. (Frontier), holds exemption authority and is designated to serve the Denver-Cancun and Denver-Puerto Vallarta markets.

² Champion Air also advised us that it did not intend to prosecute its requests for exemption authority to serve the Detroit-Cancun and St. Louis-Cancun markets (markets that are also at issue in the *2004 U.S.-Mexico Combination Service Proceeding* in Docket OST-2004-18692). We will dispose of Champion Air's Detroit-Cancun and St. Louis-Cancun requests separately.

On August 18, 2004, United filed a motion requesting that the Department: (1) grant Allegiant's motion to withdraw its Denver-Cancun application, (2) dismiss Champion Air's applications for Denver-Cancun and Denver-Puerto Vallarta authority due to the carrier's failure to prosecute those requests, and (3) immediately grant United's now unopposed applications for exemption authority to serve the Denver-Cancun and Denver-Puerto Vallarta markets.³

Responses to United's motion were filed by Spirit Airlines, Inc. (Spirit), Frontier, and Brendan Airways, LLC d/b/a USA 3000 Airlines (USA 3000), including motions filed by Spirit, Frontier, and USA 3000. These submissions all raise matters going to other routes at issue in the *2004 U.S.-Mexico Combination Service Proceeding* and to procedural issues relating to our consideration of those route requests. No party opposed United's August 18 motion. United filed a reply saying that it did not oppose the other requests so long as they did not delay action on United's motion, but noting that the United motion was now ripe, whereas the other requests were not.

Decision

Under the circumstances presented, United is now the only applicant requesting exemption authority in both the Denver-Cancun and Denver-Puerto Vallarta markets. In light of the fact that there are no longer competing requests for these markets, no party has opposed United's request for an immediate award of Denver-Cancun and Denver-Puerto Vallarta exemption authority, and there is one designation opportunity available for both the Denver-Cancun and Denver-Puerto Vallarta services, we have decided to grant United's August 18 motion and (1) grant Allegiant's request to withdraw its application for Denver-Cancun authority; (2) dismiss Champion Air's applications for authority to serve the Denver-Cancun and Denver-Puerto Vallarta markets; and (3) award United the Denver-Cancun and Denver-Puerto Vallarta exemption authority it requests.⁴

DISPOSITION

1. We grant exemption authority to United Air Lines, Inc., to provide foreign scheduled air transportation between (1) the terminal point Denver, Colorado, and the terminal point Cancun, Mexico; and (2) the terminal point Denver, Colorado, and the terminal point Puerto Vallarta, Mexico;
2. The exemption authority granted is effective immediately for a period of two years from the date of this notice, subject to the conditions outlined below;
3. The exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our policy, the dormancy notice period will begin on United's proposed start-up dates in the subject markets, as follows: September 11, 2004, for the Denver-Cancun market; and December 16, 2004, for the Denver-Puerto Vallarta market;⁵
4. We grant the motion of Allegiant Air, LLC for leave to withdraw its request for exemption authority to serve the Denver-Cancun market in the *2004 U.S.-Mexico Combination Service Proceeding*, Docket OST-2004-18692;
5. We dismiss the requests of Grand Holdings, Inc., d/b/a Champion Air for exemption authority to serve the Denver-Cancun/Puerto Vallarta markets in the *2004 U.S.-Mexico Combination Service Proceeding*, Docket OST-2004-18692;
6. We dismiss, as moot, the July 19 motion of United Air Lines, Inc., for *pendente lite* authority to serve the Denver-Cancun market in the *2004 U.S.-Mexico Combination Service Proceeding*, Docket OST-2004-18692;

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³ At United's request, and with the consent of all parties served with a copy of United's motion, we shortened the date for answers to United's motion to August 20, and replies to August 23 (see Notice dated August 20, 2004, in the *2004 U.S.-Mexico Combination Service Proceeding*, Docket OST-2004-18692).

⁴ On July 19, 2004, United filed a motion for *pendente lite* grant of exemption authority to serve the Denver-Cancun market. In light of our action here, we are dismissing the July 19 motion as moot. With regard to the motions of Spirit, Frontier, and USA 3000 filed after United's August 18 motion, we will handle them separately after they become ripe.

⁵ See United's Direct Exhibits, at 3.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificates of public convenience and necessity

XX Standard Exemption Conditions (attached)

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.